

Arkansas, Inc.

News for Arkansas Corporations from Secretary of State Charlie Daniels

Volume 3, Issue 4 ♦ December 2006

www.sos.arkansas.gov

Profile of a Service: UCC filing and searches

The Arkansas Secretary of State's UCC division serves as the central repository for filings under the Uniform Commercial Code (UCC).

UCC financing statements are filed to protect a security interest in personal property used as collateral and establish priority in case of debtor default or bankruptcy.

Financing statements may be mailed to our office and filed the day of receipt or filed online in real time. UCC filings and amendments to these liens may be searched through our office or online.

UCC filings are \$16 and searches are \$6. Additional pages filed with the initial financing statement are \$.50 per page. Search results are \$6. Copies of search results are \$6 for the first page and \$.50 for each additional page requested with a \$100 maximum fee. Amendments to UCC financing statements are \$6 plus \$.50 per additional page. Online fees are flat fees of \$16 for financing statements and \$6 for searches or amendments.

We want to make UCC filing and searching as streamlined and accessible to the business community as possible. Our primary focus is to provide an accurate filing history of the debtor(s) to lenders and other interested parties. We are currently developing the online system to include:

- A debtor watch service, which will allow lenders to receive a report on all new UCC filings for a specific debtor. This function will allow lenders to monitor the liens against personal property of debtors with whom they do business.
- Search results compiled in a tree format. This will allow the searchers to easily access what they are looking for.
- The ability to perform nonstandard searches by date range, etc.
- The ability to scan collateral images into the online system.

For further information about filing a UCC document or requesting a search, call 501-682-3409 or 888-233-0325.



Secretary of State Charlie Daniels

Season's greetings to the business community of Arkansas. This is the last newsletter for the year 2006. It is my goal to continue to provide you with current, up-to-date, quality information that will benefit all business owners in the state of Arkansas.

This particular issue contains our Profile of the UCC division, as well as answers to your questions, a salute to the summer interns and a review of the last meeting of our Advisory Council.

What do we have planned for 2007?

• **Automating our current Lock Box System** — This process not only allows funds/checks to be deposited immediately, but starting in 2007 the paperwork will come to our office electronically, with only changes having to be re-keyed. This should result in faster service for our clients and fewer mistakes overall.

• **Coupon Payments for Batch Filers** — CPA firms, law offices

(See *LETTER* on page 2)

NOTICE:

Franchise taxes for the 2006 tax year must be paid by December 31, 2006.

Corporations which have not filed an annual report by that date will be revoked.

Entities required to pay franchise taxes and/or file an annual report are: all for-profit corporations, LLCs, LLPs, cooperatives, bank corporations and insurance companies, both foreign and domestic.

Business and Commercial Services**FAQ** ***Frequently Asked Questions***

Q. I have found a problem with some of the information about my company on your website. What should I do?

A. Please contact this office for details on the necessary forms needing filed to change our public information.

Q. When will I receive my franchise tax form for the 2007 reporting year?

A. The forms are mailed in January and are available online after January 1. If your company does not receive a form by the end of February, please contact this office. A form can be either downloaded from our website, faxed or mailed to your contact or agent.

Q. How do I find the address of a company's owner?

A. Owners of a company are not required information in the articles. You may request this information from the registered agent, but it is not guaranteed that they will respond to your request.

Q. We suspect a company of fraudulent dealings. How should we report this information?

A. Please contact the Attorney General's office (www.ag.arkansas.gov, 501-682-2007, 800-482-8982) for this information.

Q. Is it possible to view filed articles online?

A. Not at this time. You will need to contact our records division for information regarding the purchase of articles.

Q. I have unsuccessfully searched online for a company that is supposed to be registered with your office. Does this mean the company is not qualified?

A. No. Please contact this office via e-mail or telephone for a more accurate search. Some companies, for instance those whose names start with initials, require various search methods.

Q. I am filing my taxes online. Should I file the final report?

A. No. **Do not** file this report unless you are planning on dissolving or withdrawing your company from doing business in Arkansas. Filing this report may delay an update of your franchise taxes.

Q. Will I receive my Federal Tax ID number from your office?

A. No. You must contact the IRS (www.irs.gov) for this information.

Q. Can I change the name of my company online?

A. Yes, you will need to file an amendment to change your company name. All necessary forms relating to your company type can be found on our website, www.sos.arkansas.gov.

Q. I have noticed I made a mistake in my corporate filing. How can I correct this mistake?

A. Articles of correction can be filed if the company is no more than 30 days old. After 30 days an amendment should be filed.

Have a question? Email us: Business and Commercial Services at corporations@sos.arkansas.gov.



BCS 2006 summer interns, pictured with Secretary of State Charlie Daniels and BCS director Charolett Martin, were: (front row) Ryan Green, Ryan Todd, (middle) Shannetta Allen, William Douthard, Greg Hunt, Angel Harris, (back) Jermaine Poindexter, Mitchell Dedman, André Rogers, Gregory Steinsiek and Chad Brown.

LETTER, continued from page 1

and other filers will be able to file hundreds of entities with our office providing individual coupons to the owners for payment online or through the mail.

• Also, the long awaited ability to make address changes to **Notary and Franchise Tax** forms will be available online.

These new features will bring additional ease to your paying franchise taxes and updating records. As always, my number one goal is making Business and Commercial Services work for you.

NOTARY CORNER



The last Notary Corner described the powers that are granted to notaries public by Arkansas law. This issue will describe the limitations that the law places on notaries and the possible consequences if they choose to participate in these prohibited acts.

These actions include criminal activity and behavior that may result in the revocation of a notary's commission. The following portions of Arkansas law detail unlawful and/or prohibited acts.

A.C.A. § 21-14-111 states the following:

(a) It is unlawful for any notary public to witness any signature on any instrument unless the notary public either:

(1) Witnesses the signing of the instrument and personally knows the signer or is presented proof of the identity of the signer; or

(2) Recognizes the signature of the signer by virtue of familiarity with the signature.

(b) Any notary public violating this section shall be guilty of a Class A misdemeanor.

For purposes of this section,

"personally knows" means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty.

In addition to the above, it is also unlawful for any notary public to take an acknowledgment of an instrument executed by or to a bank or other corporation of which the notary is a stockholder, director, officer, or employee *where the notary public is a party to the instrument*, either individually or as a representative of the corporation. (emphasis added)

Arkansas law also sets out various acts that may result in the denial or revocation of a notary commission. These offenses can be divided into two categories. Three of the offenses must be determined by a court of law while the Secretary of State can determine the other three.

These offenses are:

- being convicted of official misconduct under the provisions of A.C.A. § 21-14-111 (see previous paragraph);
- being found by a court of this state to have engaged in the unauthorized practice of law;
- being found by a court to have improperly notarized documents according to the law, or
- submitting false or misleading information on a notary public application;

- knowingly using misleading advertisement which represents that the notary has powers, duties, rights, or privileges that the notary does not possess by law;

- failing to complete the requirements of the law under § 21-14-101. Examples of these requirements include the filing of a \$7,500.00 surety bond or contract and the signing and filing the statutorily prescribed oath.

If the Secretary of State determines the notary public's commission should be revoked, the notary will be notified of the decision. The notary public shall immediately send or have delivered to the Secretary of State:

(1) The notary public's journal of notarial acts;

(2) All other papers and copies relating to the notary's notarial acts; and

(3) The notary public's official seal.

Upon notification the notary public has the right to appeal the decision of the Secretary of State to the Pulaski County Circuit Court.

As one can see, the unlawful and prohibited acts and actions of a notary public are detailed in the law and are straightforward. For more information on this subject or copies of previous Notary Corners please contact the Business and Commercial Services Division at 501-682-3409 or 888-233-0325.

Notary education class a resounding success

The Secretary of State Business and Commercial Services division offers free educational seminars to notaries public.

These seminars are held in our Little Rock office on the second Wednesday of every month, or staff will conduct seminars on-location by special request for groups of 10 or more.

In the spring and fall, staff take these seminars on the road across Arkansas. Since its inception in August 2005, over 1,900 people have attended the class.

To schedule a class, call 501-682-3409 or 888-233-0325.

**Need a speaker
for your next
meeting?**

**Call BCS
(501) 682-3409**

BCS Advisory Council discusses procedures, possible legislation

The Business and Commercial Services Advisory Council in October discussed the possibility of requiring annual reports (without franchise taxes) from nonprofit organizations. Thousands of such organizations have filed with the Secretary of State's office over the years but have never updated their information.

Discussion included standardization of fees charged for various services, such as filing and dissolving a business, to reduce the wide disparity in the current fee schedule. Action has not yet been taken and could require legislative approval.

BCS staff also provided information about departmental publications and updated the board on various activities within the division. In early 2007 the lockbox means of paying franchise tax will be revised to provide more streamlined service. The BCS page of

the office's website has been revamped for easier navigation, and the office and council are considering various issues

to present to the legislature during the 2007 General Assembly.



Members of the BCS Advisory Council and BCS staff share a laugh during the council's semi-annual meeting to discuss policy and proposed changes at the Arkansas Secretary of State's office.



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**For information about this case,
call Gill A. Rogers at Trammel Rogers PLC, 501-223-3100,
or Steven A. Owings, 501-661-9999.**

On November 30, 1999, T & T Chemical Company filed a class action lawsuit against Sharon Priest, Secretary of State and Jimmie Lou Fisher, Treasurer of State. The court ordered the publication of the following notice, in this newsletter, on September 25, 2006. All inquiries concerning this case should be made to: Gill A. Rogers, at Trammel Rogers, PLC, 13608 Kanis Road, Little Rock, Arkansas 72211 (501) 223-3100 or Steven A. Owings, 1320 Brookwood Suite D, Little Rock, Arkansas 72202 (501) 661-9999.

**IN THE CIRCUIT COURT OF PULASKI
COUNTY, ARKANSAS**

12TH DIVISION

T&T CHEMICAL, INC., On Behalf of
Itself and All Other Similarly Situated
Taxpayers

PLAINTIFF

VS. NO. 0T-99-6191

SHARON PRIEST, Secretary of State
for the State of Arkansas; and

JIMMIE LOU FISHER, Treasurer of the
State of Arkansas,

DEFENDANTS

NOTICE OF PENDENCY OF CLASS ACTION

TO: ALL CORPORATIONS, DOMESTIC
OR FOREIGN, THAT HAVE PAID ARKANSAS
CORPORATE FRANCHISE TAXES FOR TAX
YEARS 1993 THROUGH 1999.

Pursuant to an Order dated March 31, 2003,

the Pulaski County Circuit Court, 12th Division, determined that the above-captioned case is an illegal exaction case and that a class is therefore certified pursuant to Article XVI, §13 of the Arkansas Constitution, and directed giving of notice as follows:

1. Claims Asserted In This Class Action. The Plaintiffs' Complaint in this action was filed on November 30, 1999 and subsequently amended on May 1, 2000, and was filed pursuant to Article 16 §13 of the Arkansas Constitution alleging claims of illegal exaction. The Complaint alleges that the Arkansas Secretary of State illegally increased the corporate franchise tax rate from \$50 to \$56 in 1993 and collected said \$6 increment through tax year 1999. The Complaint asks the Court to order a refund of the \$6.00 paid by corporations in Arkansas for those tax years. This notice is not to be construed as an expression of any opinion by the Court with respect to the merits of the respective claims or defenses of the parties.

2. Definition of Plaintiff Class. The Court has ordered certification of a plaintiff class defined as follows: all corporations, insurance companies, financial institutions, professional associations, limited liability corporations, professional limited liability corporations and any and all other entities that have paid Arkansas corporate franchise fees on or after January 1, 1993 and that have been assessed the \$6.00 franchise tax increase that began in 1993 and continued through tax year 1999.

3. Rights of Class Members. Class members are hereby advised that any judgment or settlement of this action will be binding on all members of the plaintiff class.

The plaintiff class representatives seek a refund of some or all of the above-mentioned taxes, as well as an award of attorneys' fees and costs, which would be deducted from any refunds ordered by the Court. All members of

the class have the right to become a named party to this lawsuit to assure that there is no collusion between the parties, and to provide input to the Court concerning the amount of any costs or attorney fees that may be awarded by the Court. Any class member wishing to become a party to the case must, through counsel licensed to practice law in the Courts of the State of Arkansas, file a motion to intervene with the Clerk of the Circuit Court on or before December 15, 2006.

Members of the class may not "opt out" of the litigation, but class members may declare any alleged illegal tax that it paid to have been "voluntarily" paid so as to remove the amount paid from any potential refund in this illegal exaction suit. If you desire to declare any of the taxes at issue in this case to have been "voluntarily" paid by you, you must file a written statement so indicating with the Pulaski Circuit Clerk, Pulaski County Courthouse, 401 West Markham Street, Little Rock, Arkansas, 72201, on or before December 15, 2006. Your written statement must contain the caption and case number for this action (T&T Chemical Inc., v. Priest, et al., Circuit Court of Pulaski County, 12th Division, No. 0T-99-6191) your full corporate name, mailing address, FEIN, and must specify the tax payment or payments you wish to designate as having been "voluntarily" paid by you. Additional copies of such statements must also be sent by United States Mail to Gill A. Rogers, lead counsel for the plaintiff taxpayers, at Trammel Rogers, PLC, 13608 Kanis Road, Little Rock, AR 72211, and to Timothy G. Gauger, Deputy Attorney General, 323 Center Street, Suite 1100, Little Rock, AR 72201, no later than December 15, 2006. If you should have any questions please contact counsel for plaintiff taxpayers: Gill A. Rogers, at Trammel Rogers, PLC, 13608 Kanis Road, Little Rock, AR 72211, 501-223-3100, or Steven A. Owings, 1320 Brookwood Suite D, Little Rock, AR 72202, 501-661-9999.

PLEASE DO NOT CALL OR WRITE THE
COURT OR THE OFFICE OF THE CLERK OF
THE COURT FOR INFORMATION OR ADVICE.

**For information about this case, call Gill A. Rogers at Trammel Rogers PLC, 501-223-3100,
or Steven A. Owings, 501-661-9999**